EXHIBIT O

PUBLIC SERVICE COMMISSION
WEST VIRGINIA
CHARLESTON

CASE NO. 02-0254-T-C
NORTH COUNTY COMMUNICATIONS CORP.,

Complainant,

v.

VERIZON WEST VIRGINIA INC.,

Defendant.

CASE NO. 02-0722-T-CN

NYNEX LONG DISTANCE COMPANY, dba
VERIZON ENTERPRISE SOLUTIONS.

CA SE NO. 02-0723-T-CN

BELL ATLANTIC COMMUNICATIONS, INC., dba
VERIZON LONG DISTANCE.

COMMISSION STAFF'S POST-HEARING BRIEF

Virginia – noting that it needed "less that [sic] twenty-eight T1's," that NCC "would be satisfied if [it] had ten T1's," and that it could "get by with four T1's". Id. Yet with less information, Verizon interconnected with NCC – at a loop facility no less. The big difference, of course, was that NCC sued Verizon quickly when the company first balked at interconnecting. See NCC Post Hearing Exh. A.

C. Conclusion.

For all the foregoing reasons, the Commission should conclude that Verizon violated its obligations under Section 251(c)(2) of the Act and 47 C.F.R. § 51.305, as well as Telephone Rule 15.2.a, by refusing to interconnect at any technically feasible point requested by NCC.

IV. DESPITE ASSERTIONS TO THE CONTRARY, VERIZON APPEARS TO HAVE A POLICY DISALLOWING CLEC INTERCONNECTION AT LOOP FACILITIES, IN VIOLATION OF ITS OBLIGATIONS UNDER SECTION 252 OF THE ACT.

One of the most bitterly contested issues in this proceeding was the existence or non-existence of Verizon policy regarding interconnection with CLECs. There are actually 2, interrelated policies involved: first, whether Verizon requires CLECs to interconnect with it using dedicated, entrance facilities; and second, whether Verizon will interconnect with CLECs at shared loop facilities.

Verizon insists that no such policy exists, and that any reference to such a policy was a poor choice of words by NCC's account manager, Ms. McKernan. NCC insists that Ms. McKernan's use of the term "policy" was no mistake and that, in fact, Verizon will not

interconnect with CLECs at shared loop facilities as a matter of course. Staff believes that the weight of the evidence establishes that such a policy, or at least practice, exists and that Verizon's claims otherwise are simply not credible. This policy or practice violates its obligations under Sections 251 and 252 of the Act, the FCC's regulations, as well as W. Va. Code § 24-2-7(a) and Telephone Rule 15.2.a.

A. The Record Supports NCC's Claim Of An Unlawful Interconnection Policy Within Verizon.

NCC introduced clear and convincing evidence that Verizon applied, or continues to apply, a corporate policy that it will not interconnect with CLECs at loop facilities. This evidence is particularly damning in light of the fact that most of it comes from Verizon itself.

First, in numerous emails to NCC regarding its interconnection requests in West Virginia, Illinois and New York, Verizon states – unequivocally – the NCC cannot interconnect at loop facilities. In West Virginia, Ms. McKernan states, on July 3, 2001, that:

> It was on that [January 2001] call that we determined you need to build an Entrance Facility because you could not use a non-wholesale market entrance.

NCC Exh. 3C-009. Later, with regard to NCC interconnecting with Verizon in Illinois, Ms. McKernan states, on December 13, 2001, that:

> It took a bit of investigating to get to the Verizon West Policy on terminating Interconnection trunks on Enterprise Facilities. Unfortunately, the West policy is the same as the east, as you can see in the message below. . . . We will not terminate interconnection trunks on a retail/enterprise facility. . . . I hope this information will assist you in making a decision on interconnecting in Illinois.[15]

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[15]Apparently the email did assist NCC in making its decision in Illinois because it filed a complaint against Verizon with the state commission a few weeks later. NCC Post-

NCC Exh. 3C-033. And again, in New York, on December 27, 1991, Ms. McKernan writes:

> The CLLI code you provided, NYCMNYWHW11 is a shared mux and cannot be used for wholesale services.

NCC Exh. 3C-031. Three states, three requests, three strikes on NCC's interconnection requests – all over the course of a year (counting the statements made to NCC during the January 2001, conference call).

The Illinois email chain is particularly damaging to Verizon. Ms. McKernan attached a string of internal emails within Verizon regarding its "policy". In the first internal email, addressed to Candy Thompson,[16] dated December 11, 2001, Ms. McKernan notes that "Todd Lesser has a question about Verizon's policy on entrance facilities" in Illinois, "would you please take a look at the bolded paragraph below and advise me on [Verizon's] policy in Illinois". NCC Exh. 3C-035. The bolded paragraph is apparently part of an earlier email sent by Mr. Lesser to Ms. McKernan. Ms. Thompson then forwarded the question to 2 other Verizon employees, Denise Monte and Charles Bartholomew, asking either of them to respond to NCC's "concerns regarding entrance facility requirements in Illinois". Id. In response, Mr. Bartholomew wrote Ms. McKernan the same day, December 11, 2001, to advise: "VZWest does not require a fiber build in order to interconnect. CLEC's may use leased facilities, collocation or fiber". NCC Exh. 3C-034.

Apparently, Ms. McKernan was not clear on Mr. Bartholomew's reply, because she

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Hearing Exh. A.

[16]Ms. Thompson is indicated as the "Manager-Technical Support, Verizon Wholesale Services West". NCC Exh. 3C-035.

emailed a clarifying question to him on December 12, 2001, asking:

> This customer is interested in using a existing enterprise services mux at the location. Would we be able to place the trunks on that type of facility? Verizon East has a policy against such an arrangement

NCC Exh. 3C-033. The next day, Mr. Bartholomew replied, advising Ms. McKernan that: "We received word from Product Management that the Verizon West Policy is the same as the east. The CLEC may not terminate interconnection facilities on a retail facility". Id. Mr. Bartholomew copied Ms. Thompson, Ms. Monte and another Verizon employee, Kathryn J. Allison, on his emails to Ms. McKernan.

B. Verizon's "Evidence" That No Policy Exists Is Simply Not Credible.

Ms. McKernan claims that she mistakenly used the "term" policy in her emails to Mr. Lesser, and to other Verizon employees. Tr. II, at 223. Ms. McKernan claims that she initiated the use of the term, in order to make it sound more "important" to Mr. Lesser. Tr. II, at 223, 235. With all respect to Ms. McKernan, Staff is unconvinced.

For one thing, it appears that Ms. McKernan first used the term "policy" in internal email to Ms. Thompson -- not in order to give Mr. Lesser a sense of the term's importance when with him. NCC Exh. 3C-035. Moreover, at no time during these internal Verizon email exchanges did any of the participants – including at least 3 technical support persons within Verizon -- object to use of the term "policy". Ms. McKernan suggests that the other Verizon employees simply "parroted" her mistaken use of the term "policy". Tr. II, at 224-225. Staff doubts it. It is hard to believe none of the technical people failed to raise a "red flag" and disabuse Ms. McKernan of her mistaken use of the term "policy," if there were not, in fact,

such a policy..

Moreover, other evidence in the record suggests that Ms. McKernan was not mistaken in using the term "policy" to describe Verizon's position regarding NCC's interconnection requests. To start, there is Ms. McKernan's Maryland affidavit in which she states, unequivocally, that Verizon's technical support advised NCC that "Verizon uses only dedicated entrance facilities" for interconnection. NCC Exh. F, ¶5. This affidavit was prepared – for litigation in Maryland involving issues similar to those in this proceeding – 2 months before the Illinois emails.

There is also Verizon's CLEC Handbook that at least implies that Verizon requires trunking forecasts from new entrants seeking to interconnect, at least 6 months in advance of trunk activation, in order to design and build the necessary entrance facilities. Staff's inference, interestingly, is also picked up in the Checklist Declaration filed by Verizon-WV in support of its petition for a Section 271 determination by the Commission in Case No. 02-0809-T-P. There, Verizon states

> Forecasts of CLEC demand for local interconnection trunking are an integral part of the interconnection process in West Virginia. The process calls for CLECs to project trunk requirements six months in advance fo the first forecasted trunk service date. *This six-month lead-time allows Verizon WV to plan, engineer and construct trunk network switching infrastructure in anticipation of aggregated trunk demands.*

Checklist Declaration, Case No. 02-0809-T-P, ¶43 (filed June 11, 2002)(emphasis added).

Finally, there was the testimony of Verizon's witness panel in the Maryland proceeding involving Core Communications. NCC Exh. K, at 24-27; Tr. III, at 124-130, 140-147. In that

testimony, as Mr. Albert admits – the Verizon witnesses (employees of Verizon Services Corp., just like Mr. Albert), use the present tense to state that Verizon MD does not interconnect at loop facilities.

It is only recently, and presumably as a result of the litigation initiated by NCC, that Ms. McKernan has retracted her use of the term "policy" or her unequivocal statements that Verizon uses "only dedicated entrance facilities" for installing interconnection trunks. Ms. McKernan's first retraction of the term "policy" came in a September 23, 2002, email to NCC regarding interconnection in New York. NCC Exh. 3C-048. It is worth noting that Ms. McKernan's email was sent just 3 days after her prepared direct testimony was filed in this proceeding. See Verizon Exh. 2.

For the first time, at the hearing, Ms. McKernan also attempted to explain that Mr. Bartholomew was confused by her use of the term "policy," and that he thought she was referring to "putting an interconnection trunk on an actual UNE type of retail service". Tr. II, at 285-286. Putting aside the oxymoron of "UNE type of retail service,"[17] the bottom line is that, if Mr. Bartholomew misunderstood Ms. McKernan on a subject clearly as important as the existence of a policy pursuant to which Verizon will not interconnect with CLECs, Verizon had an obligation to put his testimony in the record. Regardless of whether counsel's questions "opened" the issue of Mr. Bartholomew's state of mind, the fact remains that Ms.

[17]In Staff's experience, Verizon refers to UNEs as wholesale services – network elements that are provided to CLECs. Retail services are those services and facilities that Verizon provides to its end-user customers. So the phrase, "actual UNE type of retail service" is, for all intents and purposes, gibberish.

McKernan's testimony is rank hearsay and should be accorded little weight by the Commission.

And finally, while its past dealings with Mr. Albert have earned him Staff's respect, in this instance, at least, Staff does not put great stock in Mr. Albert's testimony that Verizon's engineers make their interconnection determinations on a case by case basis and that this proves there is no corporate policy. Verizon Exh. 4A, at 2. Mr. Albert admitted that he does not establish corporate policy for network engineering within Verizon. Moreover, there are few written policies in Verizon's engineering department. Tr. III, at 191-192. Furthermore, Mr. Albert admitted that the technical support personnel who apparently advised NCC that Verizon would not interconnect at loop facilities, in both Illinois and West Virginia, do not report to him. Tr. III, at 183-184.

C. Conclusion.

For all the foregoing reasons, the Commission should conclude that Verizon has adopted or applied a policy against interconnecting with CLECs at loop facilities, even where technically feasible, in violation of Section 251(c)(2) of Act, as well as W. Va. Code § 24-2-7(a) and Telephone Rule 15.2.a. The Commission should direct that Verizon immediately cease applying any such policy and interconnect in a manner consistent with its obligations under the Act. The Commission should direct Verizon henceforth comply with its obligations to interconnect at technically feasible points, in accordance with its obligations under Sections 251 and 252 of the Act, and the Commission's rules, or be subject to penalties under Chapter 24 of the W. Va. Code.